IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-144

CONSTANCE EMLEY CHAMBERS,
Plaintiff and Appellee,

versus

ACY LEE CHAMBERS,
Defendant and Appellant.

Brief in Opposition to Petition for Writ of Certiorari

This case involves an application of well settled Louisiana law recognizing the wife's one-half interest in community property.[1] Petitioner's attempt to transform this state law

[1] The community property consists of a settlement of petitioner's personal injury claim. Since petitioner was hurt during the time petitioner and respondent were married and living together, it is an asset of the community, which petitioner does not contest (Pet. p. 16). There is likewise no question that Louisiana law holds that the wife has a present vested interest in one-half of all the community property, *United States v. Mitchell*, _____ U.S. _____ ___, 91 S.Ct. 1763, 1769 (1971), and there is no provision which divests her of it when the parties subsequently divorce.

controversy into one raising federal questions of constitutional dimensions rests on two arguments: that there is some conflict between the Federal Employers Liability Act, 45 U.S.C., Sec. 51, *et seq.*, and Article 2334[2] of the Louisiana Revised Code, and that the classification of the husband's personal injury recovery as community property while the wife's personal injury recovery is her separate property, offends the Fourteenth Amendment to the United States Constitution.

I. THERE IS NO CONFLICT BETWEEN 45 U.S.C. SEC. 51 *ET SEQ.*, AND LOUISIANA LAW WHICH WOULD NECESSITATE THE LOUISIANA LAW BEING SUPERSEDED.

It is petitioner's contention that his personal injury recovery proceeded from a federal cause of action, namely, 45 U.S.C. Sec. 51 *et seq.*, and that such recovery should not be governed by Louisiana community property laws which recognize the wife's present vested interest in one-half of all community property. Such a position is a blatant misrepresentation of the

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[2] "Art. 2334. The property of married persons is divided into separate and common property.

"Separate property is that which either party brings into the marriage, or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly.

"The earnings of the wife when living separate and apart from her husband although not separated by judgment of court, her earnings when carrying on a business, trade, occupation or industry separate from her husband, actions for damages resulting from offenses and quasi offenses and the property purchased with all funds thus derived, are her separate property.

"Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce will be his separate property. . . ."

facts.[3] His personal injury suits were brought against his employer, Illinois Central Railroad Company, **and** a third party tortfeasor, Delta Concrete Products and its insurer, Continental Casualty Company. The settlement was made with petitioner and his wife, the respondent herein, with all defendants. Nothing in the agreement indicates that only the Federal Employer's Liability Act claim was being settled. (See Agreement, Appendix A, p. 12.) As a matter of fact, Illinois Central paid one-half, and Delta Concrete Products and Continental Casualty Company paid the other half of the settlement. Therefore, by no stretch of the imagination can it be said that the funds came from a federal source.

In any event, the Federal Employers Liability Act makes no provision for the disposition of recovery for personal injuries, but merely recites that the employee can bring suit for his damages.[4] There is no prohibition against the spouse of the employee receiving an interest in such recovery anywhere in the Act. Since common law regards the husband and wife as one, it would have been redundant to include

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[3] Petitioner states on pp. 7-8 that he entered into a compromise settlement with Illinois Central Railroad, but neglects to mention Delta Concrete Products and Continental Casualty Company; see also pp. 13, 14 of the Petition, and page 2, paragraph 4.

[4] "Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin, dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, . . ." 45 U.S.C. § 51.

verbiage alluding to the wife in granting a right to sue to the husband.

It is most significant that petitioner can cite no decisions whatsoever supporting his assertion that a wife has no interest to such a claim for damages in a community property state. Instead he cites a case holding that a state wrongful death law is superseded by the Federal Employers Act, *Mondou v. New York, New Haven & Hartford Railroad Company*, 233 U.S. 1 (1911), clearly inapplicable to the circumstances herein, and *Taylor v. Taylor*, 232 U.S. 263 (1911), wherein a surviving widow, **for whose benefit** the suit is brought, pretermits participation in the recovery by a member of a lower rank of survivors, the deceased's father. (Pet. p. 19) These decisions have nothing to do with the instant matter.

There simply is no confrontation of federal law with a contrary Louisiana provision. The Federal Employers Liability Act is silent as to the distribution of the proceeds of the employee's claim for personal injuries, and thus, state law governs, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Parker v. Brown*, 317 U.S. 307 (1943). The decision of the Supreme Court of Louisiana herein does not weaken or collide with the Federal Employers Liability Act. No amount of rhetoric can create a conflict where none exists, *Joseph E. Seagram & Son, Inc. v. Hostetter*, 384 U.S. 34, 46 (1966).

The instant case was correctly decided by the state courts of Louisiana in conformity with a ruling of the Supreme Court of Louisiana, *Succession of Scott*, 231 La. 381, 91 So.2d 574 (1956), in which disability payments made by the federal government were designated as community property. See

also *Yiatchos v. Yiatchos*, 376 U.S. 306, 309 (1964), wherein this court held that ". . . we shall be guided by state law insofar as the property interests [in United States Savings Bonds] of the widow created by state law are concerned."

II. THE LOUISIANA LAW CLASSIFYING PERSONAL INJURY RECOVERY OF A HUSBAND AS COMMUNITY PROPERTY AND PERSONAL INJURY OF A WIFE AS SEPARATE PROPERTY DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

Petitioner asserts that the different treatment of husbands and wives with reference to personal injury recovery is arbitrary, capricious and denies the husband equal protection of the laws of Louisiana (Pet. p. 21). Such a statement, totally unsubstantiated by authority of any sort, would require that all state statutes which make any distinction between classes of persons were void,[5] a result directly refuted by two decisions handed down by this court this year, *United States v. Mitchell*, ____ U.S. ____, 91 S. Ct. 1763 (1971), and *Labine v. Vincent*, ____ U.S. ____, 91 S. Ct. 1017 (1971).

In *Labine*, the court had occasion to consider a provision

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[5] This Court has recognized that laws according different treatment based on the sex of the litigant does not offend the 14th Amendment in numerous instances, for example, *Radice v. New York*, 264 U.S. 292 (1924) [law prohibiting night work for women]; *Goessart v. McCleary*, 335 U.S. 464 (1948) [law prohibiting licensing of women in certain instances as bartenders]; *Hoyt v. Florida*, 368 U.S. 57 (1961) [Florida law requiring registration of women to serve as jurors upheld]; *Allred v. Heaton*, 336 S.W. 2d 251, appeal dismissed and certiorari denied, 364 U.S. 517, rehearing denied, 364 U.S. 944; see also *Heaton v. Bristol*, 317 S.W. 2d 86 (1958), appeal dismissed and certiorari denied, 359 U.S. 230, rehearing denied, 359 U.S. 999 [barring women from state supported educational institutions not offensive to the 14th amendment]; see also *Williams v. McNair*, 316 F. Supp. 134 (D.C.S.C. 1970), affirmed, ____ U.S. ____, number 1133, O.T. 1970, March 8, 1971).

of Louisiana law which distinguishes between illegitimate children whose fathers have publicly acknowledged them as opposed to legitimate. Upholding the statute, the court noted that such "discrimination" was a lawful exercise of the state's power:

> "The people of Louisiana, through their legislature have carefully regulated many of the property rights incident to family life.
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> * * *
>
> "But the choices reflected by the intestate successions statute are choices which it is within the power of the State to make. The Federal Constitution does not give this Court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this Court believe that they can provide better rules. Of course, it may be said that the rules adopted by the Louisiana Legislature 'discriminate' against illegitimates. But the rules also discriminate against collateral relations, as opposed to ascendants, and against ascendants, as opposed to descendants. Other rules determining property rights based on family status also 'discriminate' in favor of wives and against 'concubines.'
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> * * *
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> "But the power to make rules to establish, protect, and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana through the Legislature of that state. Absent the specific constitutional guarantee, it is for that legislature, not the life tenured judges of this Court, to select from among possible laws."

Labine v. Vincent, 91 S. Ct. at pp. 1020-1021.

Such "discriminations" likewise abound with respect to the community property regime between the spouses,[6] and were examined very recently in *United States v. Mitchell*, *supra*. The issue in that case was whether a married woman is personally liable for federal income taxes on one-half of the

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[6] **Rights of Husband**

Use of community property, Rev. Civil Code, Art. 2402

Enjoyment of community property, Art. 2402

Power to sell community property, Art. 2402

Power to donate movable effects of the community, Art. 2404

Control of community property as head and master, Art. 2404

Administration of wife's separate property unless she controls it alone, Art. 2385

Control, use, enjoyment of wife's wages, Art. 2402

Right to sue for wife's loss of earnings to the exclusion of the wife, *Anderson v. Simmons*, 75 So.2d 34 (La. App. 1954)

Right to control community property with no right in wife to an accounting, *Bynacker v. McMichael*, 194 So.2d 335 (La. App. 1967), cert. granted, 251 La. 654, 205 So.2d 433 (1968); cert. denied, 393 U.S. 871 (1969).

No prohibition against suing wife and recovering from her separate property, while wife specifically prohibited from suing husband, *Amsterdam Casualty Co.*, 6 So.2d 774 (La. App. 1942).

Rights of Wife

To retain personal injury recovery in her separate property, Art. 2334.

community property, despite her exercise of her right to statutory exoneration from community debts. It was urged that she should not be held equally liable when she did not have equal capacity to control the community funds as described in this portion of the opinion:

> "It is also said that the wife's dominion over the community property is non-existent in Louisiana; that the husband administers the community affairs as he sees fit; that he is not required to account to the wife even for mismanagement, unless he enriches his estate at her expense by fraud; that she has no way to terminate the community other than by suit for separation, and then only by showing mismanagement on his part that threatens their separate estate; that her status is imposed by law as contrasted with the commercial partnership where status is consensual; that she has no legal right to obtain the information necessary to file a tax return or to obtain the funds with which to pay the tax."
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> *U.S. v. Mitchell*, 91 S. Ct. at p. 1771.

The Court noted this argument had been rejected in the earlier case of *Poe v. Seaborn*, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239 (1930), and came to this conclusion:

> "It must be conceded that these cases are 'hard' cases and exceedingly unfortunate for the two women tax payers. Mrs. Mitchell loses the benefit of her inheritance from her mother, an inheritance that ripened after the dissolution of her marriage. Mrs. Angelo loses her beneficiary interest in her deceased husband's life insurance policy. This takes place with each wife not really aware of the community tax situation, and not really in a posi-

> tion to ascertain the details of the community income. The law, however, is clear. The taxes were due. They were not paid. Returns were not even filed. The word 'fault' if fault there be, lies with the four tax payers enclosed from the settled principals of the community property system. If the wives were to prevail here, they would have the best of both worlds.
>
> "The remedy is in legislation." *U.S. v. Mitchell*, 91 S. Ct. at p. 1772.

The identical rationale was invoked in the case at bar, when the Supreme Court of Louisiana held that the courts are not to make law, but to interpret the law as it presently exists. (Majority Opinion, Pet., p. 38).

While petitioner is understandably loathe to share his settlement with a wife from whom he is now divorced,[7] to grant his prayer for relief would require this court to revise one portion of the Louisiana community property regime, leaving all of the other inequities intact, and to repudiate its late holdings of *Labine v. Vincent, supra*, and *United States v. Mitchell, supra.*

It is respectfully submitted that there being no discern-

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[7] Petitioner also contends the settlement represents "post divorce losses," which is negated by an examination of the agreement (Appendix A). There is no showing as to what the "post divorce losses" allegedly sustained by petitioner could have been. Absolutely no mention of an apportionment of the settlement into past, present and future pain and suffering or future medical expenses is made in the settlement agreement.

ible showing of any federal question, the petition is without merit and should be denied.

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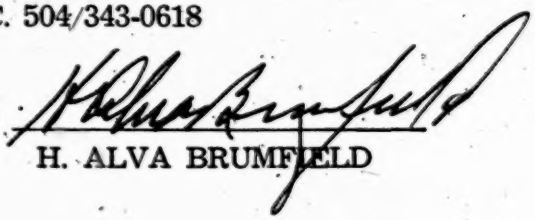
By: 
H. ALVA BRUMFIELD

CERTIFICATE

I do hereby certify that a copy of the above and foregoing Brief in Opposition to Petition for Certiorari has this day been mailed, postage prepaid, to Stanford O. Bardwell, Jr., Esquire, Attorney at Law, Suite 324, Republic Tower, 5700 Florida Boulevard, Baton Rouge, Louisiana, and Robert Tillery, Esquire, Attorney at Law, Attorneys Building, 300 Louisiana Avenue, Baton Rouge, Louisiana, counsel of record for plaintiff herein.

Baton Rouge, Louisiana, this 18 day of August, 1971.

H. ALVA BRUMFIELD

APPENDIX A

AGREEMENT

STATE OF LOUISIANA

PARISH OF

BE IT KNOWN, That on this 9th day of September, 1967, before me, a Notary Public, duly commissioned and qualified in and for the Parish and State aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared:

ACY LEE CHAMBERS

a resident of the legal age of majority of the Parish of East Baton Rouge, State of Louisiana; married once and then to Constance Marie Emley Chambers, from whom he was legally divorced by judgment of The Family Court, Parish of East Baton Rouge, dated September 5, 1967, and

CONSTANCE MARIE EMLEY CHAMBERS

a resident of the legal age of majority of the Parish of East Baton Rouge, State of Louisiana, who was legally divorved from Acy Lee Chambers by judgment of The Family Court, Parish of East Baton Rouge, dated September 5, 1967, who declared that:

1.

As a result of personal injuries sustained, Acy Lee Chambers is plaintiff in the following lawsuits: "Acy L.

Chambers vs. Illinois Central Railroad Company", Civil Suit No. 66-82 on the docket of the United States District Court, Eastern District of Louisiana, Baton Rouge Division; "Acy L. Chambers vs. Delta Concrete Products, Inc. & Continental Cas. Co., in which he seeks to recover damages in excess of one million dollars.

2.

Illinois Central Railroad Company and the other defendants in the above mentioned lawsuits deny liability to Acy Lee Chambers but have offered by way of compromise, to settle these lawsuits on the following terms:

(a) Illinois Central Railroad Company and Delta Concrete Products, Inc. and Continental Cas. Co. will pay the sum of Two Hundred Eleven Thousand ($211,000) Dollars, in addition to all sums previously paid to Acy Lee Chambers or on his behalf;

(b) Illinois Central Railroad Company shall pay all medical expenses incurred by Acy Lee Chambers as a result of the accident through April 1, 1967;

(c) Illinois Central Railroad Company will pay all hospital expenses incurred by Acy Lee Chambers as a result of the accident through April 5, 1967.

3.

There is a dispute between Acy Lee Chambers and Constance Marie Emley Chambers as to whether any part of the sums recovered by Acy Lee Chambers, whether as a result of judgment in or by compromise of the previously mentioned lawsuits, are assets of the matrimonial community

of acquets and gains which formerly existed between them, as claimed by Constance Marie Emley Chambers, or are the separate property of Acy Lee Chambers, as claimed by him.

4.

After deliberation with his counsel, Acy Lee Chambers has determined that it is in his best interest to accept the compromise offer made by Illinois Central Railroad Company and the other defendants. After deliberation with her Counsel, Constance Marie Emley Chambers has determined that it is in her best interest that Acy Lee Chambers accept the compromise offer made by the Illinois Central Railroad Company and the other defendants, and for her to execute this agreement.

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THEREFORE, The Appearers agree as follows:

(a) The draft for Two Hundred Eleven Thousand ($211,000) Dollars issued by Illinois Central Railroad Company shall be payable to Acy Lee Chambers, Constance Marie Emley Chambers, and Robert E. Tillery, as their interest may appear.

(b) Constance Marie Emley Chambers warrants that she will endorse said draft and deliver it to Robert E. Tillery and sign all necessary receipts and releases presented by the Illinois Central Railroad and the other defendants, on the same day that the draft is delivered to Acy Lee Chambers, and further agrees that should she fail to do so for any reason within her control, such failure shall be a confession that all sums received by Acy Lee Chambers as a result of the previously mentioned lawsuits shall be his separate property.

Acy Lee Chambers warrants that he will endorse said drafts and sign all necessary receipts and releases presented by the Illinois Central Railroad Company and that of the other defendants on the same day the draft is delivered to him, and upon so doing, deliver the draft to Robert E. Tillery.

6.

Robert E. Tillery shall endorse said draft and deposit it with the First National Bank of Denham Springs, to the credit of Nesom, Mellon, Tillery and Cavanaugh, Client Account. Thereupon, Robert E. Tillery shall issue checks from said account as follows:

(a) Check to pay such community debts incurred to the date the settlement is completed as claimed by Acy Lee Chambers and as shown on the attached ledger sheet in the amount of $50,468.86, that at which time Constance Chambers does not agree to shall be deposited in a separate account at First National Bank to be withdrawn only on joint signatures of H. Alva Brumfield and Robert E. Tillery;

(b) A check for one-half the balance to Acy Lee Chambers;

(c) A check for the remainder payable to the Chambers Escrow Account;

(d) A check for attorney fees to Robert E. Tillery in the amount of ⅓ of the gross amount of the defendant's draft, which is disputed by Constance Chambers, which she claims is ¼.

7.

The Chambers Escrow Account shall be maintained at

First National Bank of Denham Springs or such other bank as attorneys for Acy Lee Chambers may designate. Money deposited in this account shall be invested in certificates of deposit bearing the most advantageous interest rate available at the bank maintaining the Escrow Account. Interest earned on the certificates of deposit shall remain in the Escrow Account. Funds shall be drawn from the Chambers Escrow Account only: (a) On application signed jointly by Acy Lee Chambers and Constance Marie Emley Chambers; (b) On order of any Court having jurisdiction over the controversy between Acy Lee Chambers and Constance Marie Emley Chambers.

8.

Nothing in this agreement, nor the inclusion of the name, Constance Marie Emley Chambers on the draft issued by the Illinois Central Railroad Company, nor the signing of any receipt or release by her, shall be taken as an admission, acquiescence, or confession by Acy Lee Chambers that Constance Marie Emley Chambers has any interest whatever in the funds received as a result of settlement of the previously mentioned lawsuits; nor shall it ever estop him to deny that such funds are part of the community of acquets and gains formerly existing between him and Constance Marie Emley Chambers. Nothing in this agreement, nor any circumstances of the settlement (except the circumstances mentioned in paragraph 5 if such be the case) shall ever be taken as an admission, acquiescence, or confession that the funds received as a result of the settlement of the previously mentioned lawsuits are the separate property of Acy Lee Chambers; nor shall it ever estop Constance Marie Emley Chambers to deny

that such funds are the separate property of Acy Lee Chambers, and that said funds are her separate property.

THUS DONE AND PASSED at my office in the Parish and State aforesaid, in my presence and the presence of the undersigned witnesses on the day, month and year aforementioned.

WITNESSES:

s/ H. Alva Brumfield

s/ Carey J. Guglielmo

s/ Acy Lee Chambers

Acy Lee Chambers

s/ Constance Marie Emley Chambers

Constance Marie Emley Chambers

s/ Robert E. Tillery

s/ J. Douglas Nesom

Notary Public